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**Sixth Committee**

**Summary record of the 11th meeting**

Held at Headquarters, New York, on Tuesday, 21 October 2003, at 10 a.m.

Chairman: Mr. Baja ..... (Philippines)

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*The meeting was called to order at 10 a.m.*

**Agenda item 158: International convention against the reproductive cloning of human beings** (*continued*)  
(A/58/73; A/C.6/58/L.2, 8 and 9)

1. **Mr. Balestra** (San Marino) said that the debate on cloning had legal, ethical, moral, medical, religious and political implications. The Universal Declaration of Human Rights and the Charter of the United Nations were unmistakably dedicated to the protection of human life and dignity. That was why his delegation, which firmly believed that a complete ban on all forms of human cloning must be achieved, was one of the 56 sponsors of draft resolution A/C.6/58/L.2. Cloning a human embryo, while planning its demise, would institutionalize the deliberate destruction of nascent human life in the name of potential therapy or scientific discovery. Moreover, unless the ban was comprehensive, cloning would be impossible to control. A partial ban would facilitate the illegal proliferation of laboratories for reproductive cloning. In any case, animal cloning had shown the low effectiveness of the techniques used and the considerable risk of malformation. Lastly, his delegation could not accept research that violated human dignity, especially when the same experiments could be carried out with adult stem cells. Despite the many diverse views expressed by Member States, his delegation remained confident that consensus — which was an essential element in ensuring full respect for the Committee's decisions — could be achieved.

2. **Mr. Rodríguez** (Cuba) said that the reproductive cloning of human beings was ethically unacceptable and contrary to the values and ideals of Cuban society, based as they were on solidarity and respect for human dignity. Biotechnology should be used for the benefit of health and other legitimate human needs, and for sustainable development. Moreover, mankind could not yet control the cloning process; cloned animals had been born with severe deformities. It would therefore be totally unscrupulous and unethical to subject humans to such a process. Even when the technique became more precise, reproductive cloning would remain an irresponsible form of behaviour.

3. While there was full agreement within the Working Group concerning reproductive cloning, views varied about therapeutic cloning. In his delegation's view, States should exercise tight control over all forms

of research into human cloning, but that should not mean a complete ban on such research, which had considerable potential to resolve the question of organ transplants or the replacement of brain cells in the case of such degenerative diseases as Alzheimer's. His delegation had therefore decided to become a sponsor of draft resolution A/C.6/58/L.8, which recognized the need for a ban on reproductive cloning, together with stricter controls on other forms of human cloning.

4. **Mr. Barriga** (Liechtenstein) said that the deadlock in the Committee on the item was regrettable. The questions raised by the item were far from being purely legal, and given the variety of opinions, his delegation believed that both the protection of human life and the consensus tradition of the Committee would be best upheld by the reconvening of the Ad Hoc Committee on an International Convention against the Reproductive Cloning of Human Beings. The Committee should be given a mandate broad enough to achieve consensus and should describe, in general terms, the areas where substantial controversy persisted. Whereas, after two years of discussion, the presentation of national positions had been exhausted, the same could not be said of the exploration of new ways to bridge the gaps between them. The Ad Hoc Committee could provide a forum for such an exploration. It would be regrettable if delegations were forced to answer such substantive questions with a simple "For", "Against" or "Abstaining".

5. **Ms. Woodeson** (United Kingdom) said that her delegation, although totally opposed to reproductive cloning, which was a repugnant abuse of science, viewed therapeutic cloning in a different light, in that it involved the creation of an embryo through cell nuclear replacement for the purpose of research into serious disease. Once that embryo had developed from a single cell to the blastocyst stage — a microscopic collection of around 100 cells — the inner mass of stem cells was retrieved. Such stem cells offered enormous potential for developing new treatments for degenerative diseases that were currently incurable.

6. Some opponents of therapeutic cloning argued that adult stem cells would be just as effective. That view was not, however, supported by the international scientific community. A joint statement by 63 science academies from around the world — including the United States National Academy of Sciences — had called for a ban on reproductive but not therapeutic cloning on the grounds that stem cells occurred at all

ages, but their versatility and abundance gradually decreased with age. Whereas embryonic stem cells could produce any of the 200 specialized cells that made up the human body, adult bodies could produce only one or a limited number. Some had argued that adult stem cells had proved to be sufficiently versatile, so that there was no need for very early human embryos, but the scientific evidence did not support that view.

7. It was too early to say exactly which type of stem cell research would deliver the maximum benefits. Her delegation therefore believed that all types of research should be encouraged; indeed, it would be indefensible to stop the research and deny millions of people the chance of new treatment. It was true that therapeutic cloning and the retrieval of stem cells involved the destruction of the embryo. The same, however, was true of in vitro fertilization and such forms of birth control as the intra-uterine contraceptive device. It was morally and intellectually inconsistent to reject therapeutic cloning whilst allowing in vitro fertilization and abortion.

8. Nevertheless, the decision to permit therapeutic cloning was not one that any country could take lightly. The issue of embryo research had been debated in the United Kingdom by the public and by Parliament for over 20 years. United Kingdom legislation embodied one of the strictest and most comprehensive systems of regulation in the world: all embryo research in both the public and the private sector was subject to a case-by-case review and was licensed only for limited purposes. No research was allowed on embryos over 14 days old. In 2001, Members of Parliament had, after several days' debate, decided by three to one, on a free vote, that reproductive cloning should be banned and therapeutic cloning permitted to proceed.

9. Her delegation fully understood and respected the cultural, religious and social differences that might lead other countries to reach different conclusions on what type of research might be appropriate in their own national setting. It had no wish to impose its view on other countries. However, since many members of the Working Group supported the principle of allowing therapeutic cloning in countries with a rigorous and effective system of regulation, it would be totally unjustifiable to impose a ban on therapeutic cloning in countries which had reached a national consensus in favour of such research, which had nationally agreed regulatory systems and which were working to deliver

new treatments for serious disease. Her delegation could therefore never be a party to any convention which aimed to introduce a global ban on therapeutic cloning. It would, however, be ready to work for a worldwide ban on reproductive cloning and was therefore pleased to sponsor draft resolution A/C.6/58/L.8, which offered an effective compromise between different ethical positions.

10. **Mr. Lauber** (Switzerland) said that coordinated and comprehensive action should be taken as a matter of urgency to ban completely — and, if possible, immediately — reproductive cloning, which was forbidden under the Swiss Constitution. It was regrettable that the consensus in the Working Group had not led to the completion of the work on a draft convention. Meanwhile, his delegation supported draft resolution A/C.6/58/L.8, which was a compromise text taking account of the concerns of a number of delegations. In the long term, however, a convention on such an important and delicate topic must be universal. A mandate based on a divided vote would be counterproductive.

11. **Mr. Acosta Bonilla** (Honduras) said that the cloning of human beings, for whatever purpose, affected all societies. No country could abnegate the responsibility of expressing its point of view in the light of its national legislation, its religious faith and its deepest moral convictions. Honduras currently had no legislation specifically concerned with such cloning. In sponsoring draft resolution A/C.6/58/L.2, however, it fully endorsed the statement by the Holy See that to ban reproductive but not therapeutic cloning would make it possible to produce human life for the purpose of using and destroying it for scientific research. The future of humanity was at stake. The debate showed that the international community was not yet prepared to take a decision of such magnitude. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), only 54 countries had introduced specific legislation on the topic, which showed that any decision would be premature. The adoption of a total ban was therefore the only possible course.

12. **Mr. Ortúzar** (Chile) said that the offence to human dignity did not arise from the concept of cloning in itself, nor from the fact that the genes of two individuals were identical, since there was no diminution of such dignity in twins whose genes were identical, but rather in the use to which cloned human

beings could be put. Human dignity was infringed when one human being was forced to assume the same genetic identity as another or a human life was created in order to be destroyed. In other words, the distinction between reproductive and therapeutic cloning was artificial, although the second was a deviation from the possible development of the first. It was therefore neither scientifically nor philosophically acceptable to draw any such distinction. The international community should adopt a comprehensive convention banning the cloning of human beings and establishing effective mechanisms to punish those who assumed the right to preordain the fate of another human being. The ethical factor could not be negated by other considerations, such as freedom of research, which could easily be satisfied using other techniques and producing less questionable results than those involved in destroying an embryo or tissue. For that reason his delegation was a sponsor of draft resolution A/C.6/58/L.2. The other draft resolution — A/C.6/58/L.8 — retained the artificial distinction between the two types of cloning and placed the onus on individual States, thereby missing the opportunity to establish an international standard.

13. **Mr. Mwandembwa** (United Republic of Tanzania) said that the Committee should reflect on the debate in the Working Group and proceed cautiously on what was a highly controversial and divisive subject. For its part, his delegation favoured a convention imposing a comprehensive ban on both reproductive and therapeutic cloning of human beings. Since the technology involved was the same, a ban on reproductive cloning would send the wrong signal by implicitly authorizing the creation and destruction of human embryos for experimentation. A legal uncertainty would be created. To try to distinguish between the two kinds of cloning was merely an attempt to hide the fact that a human life was being created for the purpose of destroying it so as to produce embryonic stem cells or carry out other experiments. His delegation subscribed to the view that the dignity of human life did not allow the testing of human embryos, regardless of the objectives. Moreover, the cloning of animals had always resulted in grave abnormalities.

14. Apart from the strong ethical arguments against cloning, developing countries had other, equally strong reasons for preferring a total ban: the substantial resources that were expended on cloning should in fact

be diverted to the real crises facing such countries. Sub-Saharan Africa was, for example, currently facing the HIV/AIDS pandemic. Malaria and tuberculosis were becoming increasingly resistant to existing drugs. Moreover, taking into consideration the equipment involved, most developing countries would not be able to participate in the technological aspect of the work. Their only participation would be that their women would be reduced to being suppliers of embryos to developed countries under exploitative conditions. After the embryos had been extracted, such women would be abandoned without any care or follow-up.

15. Human dignity was the source of all rights, as recognized in various human rights instruments. That dignity must also be recognized in the case of cloning. A comprehensive ban on human cloning would have a deterrent effect on individuals and States wishing to pursue research involving the cloning of human beings.

16. **Mr. Borghini** (Monaco) said that, although Monaco did not have specific legislation dealing with cloning, the Monaco Committee on Ethics in Biomedical Research had, in July 2003, recommended a total ban on all forms of human cloning. The Government had adopted that position, although it recognized that States that had the necessary capacity imposed strict controls on cloning research. His delegation would therefore favour a convention imposing a total ban, which would have the merit of protecting countries lacking specific legislation. However, in view of the urgency of the topic, Monaco would support a draft resolution that would permit a consensus. He hoped that the General Assembly would be able to give the Ad Hoc Committee a precise mandate.

17. **Mr. Medrek** (Morocco) said that reproductive cloning constituted an unprecedented violation of human dignity and could not be countenanced in any way. The international community should act as a matter of urgency to put in place adequate legislation to ban any tendency to overturn fundamental family values. Although there seemed to be general agreement that reproductive cloning was a new and worrying aspect of biotechnology, there was a divergence of views on how to proceed. He therefore appealed to delegations to move beyond their differences and hasten to negotiate a text. Haste was necessary because the road was clear for laboratories that had already embarked on research into human cloning. Any convention must, however, be binding and should

penalize any research into cloning. The text should also be adopted by consensus; the international community should be able to speak unanimously where universal values were concerned. Such a consensus would send a powerful message to those who sought to profit from the current legal void. Meanwhile, his delegation would be in favour of convening the Ad Hoc Committee once again in 2004.

18. **Mr. Grey-Johnson** (Gambia) said that the Committee should be of one mind as to the need for a comprehensive international convention. The debate raised basic ethical questions, and his delegation was not prepared to abdicate responsibility or to alter the position it had stated the year before. The Committee should avoid decisions that might negatively impact the future of humanity, leave the door open to reckless experimentation with human life and turn human eggs and embryos into a commodity. Any cloning activity, whether reproductive or therapeutic, that might threaten the dignity and the very existence of man should be firmly resisted. No one stood to lose if the Committee took the time to adopt a comprehensive international convention that established all the requisite safeguards against abuse. His delegation therefore urged the adoption of draft resolution A/C.6/58/L.2 on an international convention against human cloning.

19. **Mr. Mahbubani** (Singapore) said that the issue under discussion differed radically from the routine. The Committee was entering uncharted territory and faced an awesome responsibility. It would require all the intelligence and imagination the Committee could muster to reach a common understanding. However, it was possible to identify consensus on several points. All delegations, without exception, shared the view that human life was sacred, and that a sharp line of demarcation must be drawn between experimentation with animals and experimentation with human life. Second, it was unanimously agreed that reproductive cloning was wrong and should be banned, in order to prevent maverick scientists from taking advantage of the gap in international law. There was also a shared perception that the issue at hand was ethical, not political. The Committee members should try to ensure that they were judging the issue on its merits and were not influenced by bilateral political alliances. He would urge delegations to set aside all political considerations and focus on the ethical dimension of the issue. There was also fundamental agreement on the principle of

respect for the wide cultural and religious diversity of mankind. The challenge before the Committee was to reflect all views and not to attempt to force a solution reflecting one view only.

20. While all agreed that human life was sacred, there was sharp disagreement as to when human life could be said to begin. Some would set the date at conception, others at 40 days after conception, and yet others would identify it even in the potential of the tiniest cells. There was also a divergence of views as to the value or the rights and wrongs of therapeutic cloning. Part of the confusion derived from the use of the word "embryo". Some delegations drew a distinction between an embryo and a human life, while others thought that an embryo inevitably implied a human life. There was room for debate, but it appeared that differing views would persist, and no one point of view should be imposed on all others. In theory, the Committee could reach a decision by voting, but nothing less than a consensus would ultimately be satisfactory.

21. He was pleased that Costa Rica, in introducing its draft resolution on human cloning, had quoted an eminent scientist, because his delegation, too, thought that the views of the responsible scientists of the world should be heeded. At a meeting of the Working Group, his delegation had presented a statement on human cloning by the InterAcademy Panel on International Issues (IAP), which represented more than 60 science academies in nations on every continent, demonstrating a wide-ranging consensus in the scientific community that reproductive cloning should be banned but therapeutic cloning should be allowed to continue. If such a large group of scientists, who had to deal with the ethical issues of therapeutic cloning on a day-to-day basis, could reach collective agreement, it was worthwhile listening to their views.

22. **The Chairman** said that he had offered to meet with the sponsors of the different draft resolutions to try to promote a compromise.

23. **Ms. Geddis** (New Zealand) said that her delegation supported scientific progress in the fields of biotechnology and genetics in a manner respectful of human rights and for the benefit of all. New Zealand shared international concerns about the human rights implications of human cloning and recognized that clear regulation was needed. The New Zealand Parliament was currently considering legislation on a

comprehensive framework for the regulation of human reproductive technologies, including a prohibition against the reproductive cloning of human individuals as ethically unacceptable and contrary to human dignity. Her delegation therefore welcomed progress on initiating international negotiations to ban human reproductive cloning. It had not yet, however, had the opportunity to conclude consideration of cloning for therapeutic and research purposes, which might have the potential to alleviate human suffering, and could not support the commencement of negotiations on a broader ban on all forms of cloning. Any international negotiations on a convention to address human cloning must be supported by the widest possible consensus, as the outcome would have value only if it were universally accepted. Such a consensus would only be possible if the international community adopted a graduated approach. Her delegation welcomed the Chairman's proposal to meet with the sponsors of the draft resolutions.

24. **Mr. Makarewicz** (Poland) said that his delegation wished to thank France and Germany for their timely initiative on the issue of human cloning, which was already raising ethical and moral as well as legal and medical challenges. After careful consideration, Poland had decided to support a ban on the cloning of human embryos for any purpose, believing that from a moral standpoint the difference between reproductive cloning and therapeutic or research cloning consisted only in the objective of the procedure. To ban reproductive cloning only, without prohibiting research cloning, would be to allow the production of individual human lives with the intention of destroying them for the sake of scientific research. The two types of cloning were inextricably linked, and only a complete ban would achieve the generally supported goal of prohibiting human reproductive cloning. At the 21st Century Talks organized by UNESCO, the Director-General of UNESCO had raised the question of the legitimacy of creating embryos whose development would be cut short and the risk, particularly in the case of poorer women, that the female body would be turned into a commodity to produce the countless eggs required for the procedure.

25. The demise of Dolly the sheep, the first mammal to be cloned, had provided some respite, even as it raised questions about the effects of cloning on cloned organisms. The Council of Europe Convention for the Protection of Human Rights and Dignity of the Human

Being with regard to the Application of Biology and Medicine (Convention on Human Rights and Biomedicine), in article 28, stated that fundamental questions raised by developments in biology and medicine should be the subject of public discussion. The Committee had the opportunity to discuss human cloning before being faced with an accomplished fact. It must not waste that opportunity. The lack of consensus in the Working Group should not prevent the Committee from deciding to convene the Ad Hoc Committee twice in 2004 to discuss further the issue of human cloning. In addition, the General Assembly should call on States that had not yet done so, pending the adoption and entry into force of an appropriate binding international instrument, to adopt at the national level a prohibition against all forms of human cloning or to ban reproductive cloning and impose a moratorium on other types of cloning.

26. **Mr. Albacete** (Spain) said that, although the recommendations of the Working Group were the same as the year before, the Committee should not yield to the temptation to defer a decision once again. That solution could not be repeated indefinitely and would undermine the credibility of the United Nations. Moreover, the need to regulate cloning at the global level had become imperative in order to prevent the cloning of human beings.

27. Nonetheless, a sense of urgency should not lead the Committee to adopt a hasty and unduly vague mandate. The Ad Hoc Committee would require a clear and unequivocal framework for its efforts to elaborate a draft convention. His delegation was pleased to note that the rigorous position it had maintained from the outset, which was embodied in draft resolution A/C.6/58/L.2, had attracted nearly 60 sponsors, and a considerable number of non-sponsoring States had indicated that they were prepared to support it. His delegation called upon all States whose national laws prohibited human cloning in any form to continue to work towards a convention that would constitute a mandatory frame of reference for the entire international community.

28. **Mr. Póvoas** (Portugal) said that his delegation reiterated its support for draft resolution A/C.6/58/L.2. Human embryos deserved protection as human beings on both ethical and scientific bases. The Council of Europe Convention on Human Rights and Biomedicine, in article 18, paragraph 2, stated that the creation of embryos for research purposes was

prohibited. The mutual tolerance that society required with respect to different philosophical and moral approaches no longer applied when human rights and dignity, especially the right to life, were involved. And under no circumstances could his delegation countenance risking the dignity of women and those from developing countries would be at the greatest risk — by treating them as mere resources for scientific research. Only by banning all forms of cloning, including therapeutic cloning, could those risks be prevented.

29. **Mr. Stanislaus** (Grenada) said that his delegation subscribed to the advancement of science to benefit mankind, but believed that technology should not be allowed to outdistance humanity. The rationale for so-called therapeutic or experimental cloning was to destroy life, a human embryo created in vitro for the purposes of harvesting stem cells, in order to save life. The human embryo was the beginning of life; to destroy it intentionally was an affront to human dignity. The difference between therapeutic cloning and reproductive cloning of human beings lay essentially in the objective of the procedure. Therefore, his delegation was in favour of elaborating a comprehensive international convention banning human embryonic cloning for both reproductive and therapeutic purposes. Instead, it advocated the less problematic use of adult stem cells from blood and brain tissue, human placentas and fetuses from spontaneous abortion and stillbirths.

30. **Mr. Mongkolnavin** (Thailand) said that while he respected the views expressed by all delegations, he also took note of the fact that millions of victims of serious diseases could benefit from therapeutic cloning experiments. He therefore supported the statement made by the representative of Belgium on the previous day. Thailand supported a ban on reproductive cloning of human beings and had prohibited its researchers from engaging in that activity, while the Thai National Center for Genetic Engineering and Biotechnology had issued guidelines for research in the field of therapeutic cloning. He encouraged all delegations to resolve their differences so that a universally applicable convention banning the cloning of human beings could be drafted.

31. **Ms. Miller** (Sweden) said that the outcome of the Working Group's deliberations and of continuing discussions in the Committee had been a disappointment to most delegations; differing backgrounds, values and beliefs and the complexity of

the science involved had made it impossible to reach common ground on the issue of cloning. A negotiating mandate should reflect the diversities of the modern world. Negotiating on a mandate that lacked consensus would exclude the very States which had a scientific knowledge of cloning techniques; it could never produce universally binding norms.

32. Sweden was reviewing its legislation on the issue under discussion. A parliamentary committee had proposed an unequivocal ban on reproductive cloning and strict regulation of therapeutic cloning, including a requirement of prior approval from an ethics committee. As a sponsor of draft resolution A/C.6/58/L.8, her delegation believed that it would provide a common platform for future negotiations. She urged delegations to uphold the Committee's tradition of consensus in order to guarantee a mandate that could lead to a universal convention prohibiting the reproductive cloning of human beings and regulating therapeutic cloning.

33. **Mr. Kobayashi** (Japan) said that his delegation had co-sponsored draft resolution A/C.6/58/L.8 in the belief that, because it allowed for choice, it could establish a broad base on which a convention with universal adherence could be negotiated. The Committee should continue to explore ways of reaching consensus through flexibility and a cooperative spirit; no premature action should be taken on the issue.

34. **Mr. Ascencio** (Mexico) said that the combination of highly sophisticated science and ethical, legal and sociological considerations made it difficult to understand the implications of cloning or to address the issue without oversimplification. Limitations on scientific research should be imposed only where human rights and dignity were at stake, as in the current case. The United Nations was the only organization competent to give comprehensive consideration to the question of an international convention against the reproductive cloning of human beings; moreover, civil society expected the Organization to achieve results which would address its concerns. His delegation did not consider it appropriate to return the topic to UNESCO.

35. The inclusion of item 158 in the agenda of the General Assembly had promoted dialogue between different branches of his Government, scientists, academics and civil society and provoked calls for

Mexico to become a party to the European Convention on Human Rights and Biomedicine and its Additional Protocol on the Prohibition of Cloning of Human Beings. Mexico opposed any form of human cloning as a violation of human dignity.

36. He regretted that the Working Group's meetings had revealed a lack of political will and the absence of a genuine wish to find compromise language. The building of consensus was a delicate task which required time; it could not be achieved by asking one side of the debate to renounce its convictions, particularly when some States had already adopted national legislation on the issue. Nothing could be gained by seeking to negotiate a convention without prior agreement on its scope, yet continued confrontation would only create a legal vacuum with serious human rights implications. His delegation was open to any proposal that would lead to consensus.

37. **Mr. Marschik** (Austria) said that Austrian legislation prohibited all forms of human cloning. His Government therefore supported efforts to achieve a worldwide comprehensive ban on the cloning of human beings, either by immediately negotiating such a ban or by negotiating first a ban on reproductive cloning and then, at a later date, a total ban; his delegation would support whichever approach seemed likely to achieve the most rapid results, bearing in mind that in order to succeed, an international convention must be signed, ratified and implemented by as many States as possible and that the Committee had been most successful with mandates adopted by consensus.

38. **Mr. Guan Jian** (China) said that the Working Group had helped delegations understand both the relevant issues and each others' positions. Consensus was a prerequisite for the adoption of an international legal instrument. On the issue of banning human reproductive cloning, such a consensus appeared to exist and should be communicated to the international community in order to prevent the commission of such an act. However, the remaining differences of opinion on the issue of therapeutic cloning could not be ignored; he hoped that States would soon find common ground. As a sponsor of draft resolution A/C.6/58/L.8, he endorsed the statement made by the representative of Belgium on the previous day and urged all delegations to ban reproductive cloning on the basis of the ideas expressed in the revised Franco-German non-paper submitted to the Working Group.

39. **Mr. Guterres** (Timor-Leste) said that his delegation was deeply concerned at recent developments in biotechnology and the cloning of human beings; it endorsed draft resolution A/C.6/58/L.2 and believed that the cloning of human beings for either reproductive or experimental purposes was unethical, immoral and unjustifiable under any circumstances. In order to preserve the balance between science and human dignity, the international community must use any legal means at its disposal to prohibit all forms of human cloning. He hoped that the Committee's deliberations would result in the drafting of an international convention against the reproductive cloning of human beings, as envisaged in General Assembly resolution 56/93.

40. **Mr. Oegroseno** (Indonesia) said that his Government had taken its position on the issue after an intensive exchange of views involving representatives of Indonesia's Ministry of Religious Affairs, Ministry of Health, religious leaders, academics, Association of Medical Doctors, Academy of Sciences and National Commission of Human Rights and of civil society. It would be irresponsible for the international community not to address, as a matter of urgency, the lack of an internationally binding instrument banning the reproductive cloning of human beings at a time when irresponsible scientists were undertaking such experiments; however, it would also be unwise for delegations to impose their own beliefs on others or to fail to respect the principles and beliefs that were the basis for differing positions. His delegation recognized the potential of therapeutic cloning research to cure disease and improve human life, but believed that such research should be strictly regulated. He encouraged the various parties to cooperate in the search for consensus on a sensitive issue.

41. **Ms. Willson** (United States of America) said that her delegation's views were well known: the United States of America supported a ban on all human cloning, whatever the purpose. That position was based not only on ethical and moral principles, but also on pragmatism: there were other ways to achieve the ends sought, including animal and adult stem cell research.

42. It had been argued that a consensus negotiating mandate and a universally ratified convention were essential and that insistence on a total ban would prevent progress on any limited ban. However, draft resolution A/C.6/58/L.2 had 57 sponsors; many other States had domestic legislation compatible with a total

ban while still others had a well developed cultural and religious concern for the sanctity of human life and human dignity. The sum of those nations represented, not consensus, but a significant majority of Member States; it would send a strong message if such a group commenced work on a convention which completely banned human cloning. Moreover, while it was true that the Committee had a tradition of consensus, a total of 43 draft resolutions had been adopted by vote during the years in which she had been a member.

43. As for the issue of universal ratification, the international community should not fail to move forward because a few States wanted to reap profit from the biotechnology industry and to protect their commercial interests in developing and marketing the products of cloned embryos, nor should the few States which would not ratify a total ban paralyse the many which would support one. She therefore urged all delegations to become sponsors of draft resolution A/C.6/58/L.2.

44. **Mr. Lacanilao** (Philippines) said that his delegation supported draft resolution A/C.6/58/L.2; a comprehensive ban on human cloning was the only viable approach for the United Nations. The same technology was used to produce embryos for implantation in a woman's womb and for destruction during research. The desire — even if sincere — of some delegations to respect the differences of opinion through a compromise formula had led them into a conceptual trap; draft resolution A/C.6/58/L.8 would not, in fact, ban human cloning since the resulting embryos could still be used for research.

45. Allowing human cloning for research purposes would have the undesirable result of perfecting a technology that could also be used to produce cloned babies. Furthermore, it would only be a matter of time until millions of cloned human embryos were produced in laboratories; no amount of regulation would be able to prevent at least one of them from finding its way into a woman's womb. Motives could vary from criminal intent to financial reward or even the "rescue" of cloned embryos, but, the birth of even one cloned baby would be one too many. He therefore called on delegations not to sacrifice human dignity on the altar of biotechnology and to embrace the approach which upheld the primacy of human dignity, embodied in draft resolution A/C.6/58/L.2.

46. **Mr. Jacovides** (Cyprus) said that Cyprus had enacted legislation implementing the Additional Protocol to the European Convention on Human Rights and Biomedicine on the Prohibition of Cloning of Human Beings and that his delegation fully supported the elaboration of an international convention which would ban the reproductive cloning of human beings, thereby confirming the universal view that such cloning was both unethical and illegal.

47. He thanked the German and French delegations for proposing the inclusion of the current item in the agenda of the General Assembly and for the ideas contained in the non-paper that they had submitted to the Working Group, and he saw much merit in the realistic approach taken by the Belgian delegation in its introduction of draft resolution A/C.6/58/L.8. At the same time, he understood the concerns of the many sponsors of draft resolution A/C.6/58/L.2 and the impressive scientific data provided by the delegation of Costa Rica. On balance, however, he believed that additional scientific research could be of assistance in improving medical knowledge and giving a better understanding of the scientific and ethical issues involved. Moreover, he was convinced that a mandate for a convention which aimed at universality could only be based on consensus; the issue did not lend itself to decision by majority, especially in the light of the Committee's tradition of compromise and consensus.

48. **Mr. Much** (Germany), speaking also on behalf of France, said that the introduction of two competing draft resolutions reflected, in the most regrettable manner, the lack of consensus which had invaded the issue of cloning of human beings during the past year and a half. Two years previously, when France and Germany had proposed the inclusion of the item in the agenda of the General Assembly, countries which were currently sponsoring one or the other of the draft resolutions had promoted a consensual approach.

49. All forms of cloning had been banned in Germany since 1990 and the French Parliament was discussing a bill which would prohibit cloning for both reproductive and research purposes and would define reproductive cloning as a crime against the human species, yet France and Germany had modified their initiative twice in an effort to accommodate other delegations and had argued for solutions that could achieve worldwide consensus rather than seeking to elevate their national laws to a universal standard.

They had not pushed for a vote in 2002, when they had had a clear majority, and they continued to support the reasonable compromise of launching negotiations on one convention which would address all forms of cloning.

50. Although the issue of cloning was extremely urgent, "consensus later" was still preferable to "vote now". Consensus was the only way to achieve a universal, binding instrument in an area which, by definition, aspired to universality. It was difficult to accept compromise in an area permeated by ethical considerations, but failure to compromise would only send a disturbing message to the scientific world: "Do as you please."

51. **Ms. Matekane** (Lesotho) said that her delegation, as a sponsor of draft resolution A/C.6/58/L.2, reaffirmed that a comprehensive and complete ban on human cloning was the right course to take. It was heartening to realize that that belief was shared by nations from various regions of the world, as shown by the long list of sponsors. Such broad support should help to dispel the impression that the approach taken in the draft resolution was aimed at suppressing and disrespecting the opposing views of others.

52. As repeatedly demonstrated by the authorities on the subject, it was not feasible to separate reproductive cloning from therapeutic cloning. The only difference between them concerned the fate of the embryo: in the former procedure, the embryo was allowed to develop and grow, while in the latter, it was destroyed. Aside from the troubling moral questions that the world would need to contend with, therapeutic cloning would, in the long run, provide an opening for clandestine reproductive cloning or the like.

53. At the start of the cloning research debate, there had been a broad consensus against the creation and use of human embryos for research. A few years later, however, an amazing shift in opinion had occurred and the same people were currently pressing the case for experimentation with human embryos. That illustrated the danger of the pressures of scientific development. There had long been scope for science to reduce human beings to mere specimens and currently there was an unprecedented opportunity to do so. There would always be pressure to make use of the opportunity, no matter what was at stake. The greatest challenge confronting the international community was to draw a line between the benefits of the biological sciences and

the urge on the part of another group of people to maximize their newly discovered capabilities at the expense of other fellow human beings.

54. **Ms. Telalian** (Greece) said that the Belgian delegation had submitted draft resolution A/C.6/58/L.8 as a compromise solution that could lead the Committee out of its impasse on the issue of human cloning. Its basic aim was the elaboration of a single convention that would deal with both reproductive human cloning and other forms of human cloning. Such an approach reflected the wishes of many delegations.

55. The draft resolution sought a universal ban on human reproductive cloning. Such a ban had gained worldwide support and was currently embodied in the domestic legislation of most States. The draft regulated the issue of therapeutic cloning by requiring States either to ban it outright or to formulate strict guidelines for such activities. That demand was essential in order to protect the most cherished values of human dignity.

56. The draft resolution took into account the ethical and political dimensions of the international discourse on human cloning and tried to find common ground. Many international bodies had done the same and had succeeded in producing important legal documents on the issue.

57. The Council of Europe at the regional level and UNESCO at the international level had elaborated significant international instruments establishing a close link between human cloning and human rights. A basic characteristic of those documents was respect for the cultural, philosophical or religious differences that existed on the issue of human cloning and constructive ambiguity with regard to the interpretation of provisions relating to therapeutic cloning.

58. **Mr. Nesi** (Italy) said that, as there was no real scientific or technological difference between reproductive and therapeutic cloning, his delegation considered that all forms of human cloning should be banned. Every State was in favour of a ban on the reproductive cloning of human beings; hence, to adopt an international convention which banned only reproductive cloning would be to restate the obvious. What should be banned was the artificial creation of human embryos for purposes other than those for which human embryos were created by nature.

59. At the beginning of the session of the Working Group in February 2002, the scientists invited to the

meeting had been asked whether human embryos could be used for therapeutic purposes without destroying them. If it was true that recourse to the exploitation of human embryos was necessary because embryonic stem cells were less specialized than adult stem cells, it was unclear why scientists did not concentrate on other research topics such as umbilical stem cells, which, according to the scientific community, were very similar to embryonic stem cells. As a sponsor of draft resolution A/C.6/58/L.2, his delegation would vote in favour of it if a vote were taken; at the same time, his delegation expressed appreciation to the Chairman for his efforts to facilitate a solution acceptable to all delegations.

60. **Mr. Thiam** (Senegal) stressed the complexity of the issues raised by human cloning in a context in which scientific progress was closely linked to legitimate concerns for the preservation of human dignity. There could be no question of opposing progress and the medical benefits deriving therefrom. For that reason, his delegation was grateful to all delegations that had submitted draft resolutions on human reproductive cloning to the Committee, particularly to those delegations which held out the hope of leading the Committee out of its impasse. At the same time, it was necessary to ensure that, beyond reaching agreement on a single draft convention, the international community could avoid the disaster of an untold number of human beings being destroyed in the laboratory. Such a risk was not hypothetical: there was a real prospect that large numbers of women from the least advantaged sectors of every society would be recruited for cloning purposes which would lead to a new form of discrimination. His delegation therefore was in favour of using only cloning techniques which avoided the destruction of human embryos, namely, those designed to produce DNA molecules, organs, plants, tissues and cells other than human embryos.

61. **Mr. Bliss** (Australia) said that his delegation continued to support the elaboration of a convention against the reproductive cloning of human beings. Its guiding principle was Australia's legislative approach, as contained in the Prohibition of Human Cloning Act 2002. The Act banned within Australia the creation of a human embryo clone; in other words, it banned both human reproductive cloning and other forms of human cloning. However, the Act was subject to an independent review to begin in December 2004 which

would include further consideration of non-reproductive human cloning.

62. His Government supported the urgent development of a convention to institute an international ban on human reproductive cloning. It was concerned that attempts to develop a convention to ban all forms of human cloning at once might in fact delay a ban on human reproductive cloning. His delegation would therefore support proposals for a convention which would ban human reproductive cloning as soon as possible while leaving some flexibility concerning other forms of human cloning. Draft resolution A/C.6/58/L.8 would achieve that goal. While his delegation would prefer an international consensus on the issue, should a vote be necessary, it had a preference for the Belgian proposal. However, his delegation urged all States to continue to work together to find a mutually acceptable solution.

63. **Mr. Kanu** (Sierra Leone) said that his delegation's support for draft resolution A/C.6/58/L.2 was unequivocal. The reproductive cloning of human beings was completely incompatible with the ethical and moral views of people in his country. There had been a public debate on the issue and the position taken was the one expressed in the draft resolution. His Government's respect for human dignity was unwavering. There was a possibility that the process of human cloning might be commercialized; if that were to occur, it would, of course, be women in developing countries who would be subject to commercial exploitation. Such a degradation of the position of women could not be tolerated. His delegation would vote in favour of draft resolution A/C.6/58/L.2 if no consensus could be reached.

64. It had been stated that human life was sacred; his delegation strongly believed that the destruction of human embryos could not be reconciled with that belief. All States agreed that human cloning was wrong. There were no guarantees that if the international community tolerated any form of human cloning, some capricious scientist would not use therapeutic techniques to clone human beings. The argument that human cloning should be allowed in order to save lives was therefore unsustainable. It had been asserted that therapeutic cloning did not involve the destruction of human life; however, therapeutic cloning required a cell, and in order to obtain a cell, it was necessary to destroy an embryo, which meant destroying human life. To state that the ethical and

religious position which his delegation held was the result of political pressure was an affront. Cultural and religious considerations in his country and many other countries required that all forms of human cloning should be proscribed.

65. Some had argued that it was the practice of the Committee to adopt decisions by consensus; however, that was merely a practice. His delegation also knew of instances in which decisions had been arrived at through voting. Nevertheless, his delegation endorsed the Chairman's last-ditch effort to facilitate a consensus.

66. **Archbishop Migliore** (Observer for the Holy See) reaffirmed his delegation's conviction that only a comprehensive convention on human cloning could address all the related issues and respond to the challenges of the twenty-first century relating to the topic. Situations that posed grave dangers to human dignity could only be effectively addressed by international agreements that were comprehensive, not partial. While a partial convention might address temporarily some issues related to human cloning, it could subsequently generate greater problems that would be even more difficult to solve. The most durable solution should therefore be an all-inclusive legal instrument. Such an instrument would provide a binding legal framework that could guide States in formulating appropriate domestic legislation on human cloning. His delegation noted with satisfaction that the number of sponsors of draft resolution A/C.6/58/L.2 had increased in the past two weeks.

67. A number of delegations had stated that the issue at hand was "complex". Pleas had also been made to avoid divisiveness, refrain from imposing a particular view, and strive for consensus on the item, as time was running short. The Committee had also been reminded that, in the matter of research cloning, it must be sensitive to diverse belief systems, religious perspectives, cultures and personal circumstances.

68. While the science might be complex, the issue was simple and straightforward. The issue of human cloning involved the beginning of human life. It was not a local issue, not a national issue, not a regional issue, but a universal issue. If the reproductive cloning of human beings contravened the law of nature — a principle on which all delegations appeared to agree — so did the cloning of human embryos for research purposes. A cloned embryo which was not destined for

implantation into a womb but was created for the sole purpose of extracting of stem cells and other materials was destined for destruction.

69. Some would argue that while it was necessary to act quickly to ban human reproductive cloning, more time must be taken to study all aspects of research cloning — a procedure that intentionally destroyed human life. He wondered how many human lives would be taken in that process. Since the process was unnecessary and would require more than one embryo per patient, hundreds of millions of cloned human embryos would be required to treat even one disease, such as diabetes, in any developed nation.

70. Lastly, his delegation reminded the Committee that one of the fundamental missions of the United Nations was to uphold the rights of all human beings. If the United Nations were to ban reproductive cloning without banning cloning for research, it would for the first time be involved in legitimizing something extraordinary: the creation of human beings for the express purpose of destroying them. If human rights meant anything, then surely no one could have the right to do such a thing.

*The meeting rose at 1 p.m.*



# General Assembly

Fifty-eighth session

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## Sixth Committee

### Summary record of the twelfth meeting

Held at Headquarters, New York, on Tuesday, 21 October 2003, at 3 p.m.

Chairman: Mr. Baja ..... (Philippines)

## Contents

Agenda item 158: International convention against the reproductive cloning of human beings (*continued*)

Agenda item 150: Convention on the jurisdictional immunities of States and their property

Agenda item 154: International Criminal Court (*continued*)

Agenda item 151: Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session (*continued*)

Agenda item 128: Administration of justice at the United Nations (*continued*)

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03-57147 (E)



*The meeting was called to order at 3.05 p.m.*

**Agenda item 158: International convention against the reproductive cloning of human beings**

*(continued)* (A/58/73, A/C.6/58/L.2, A/C.6/58/L.8 and A/C.6/58/L.9)

1. **Mr. Awanbor** (Nigeria) said that human cloning was morally repugnant and should be prohibited in all its forms. The fact that the fallacious arguments advanced in favour of the practice were being demolished was to be welcomed. He noted with consternation that the advocates of human cloning spurned all moral, religious and ethical considerations; moreover, they had not yet given a satisfactory answer to the question of the provenance of the necessary "raw materials". Because of their poverty and ignorance, the women of developing countries, and particularly of Africa, were at risk of serving as guinea-pigs. In the long run, the commercialization of cloning would threaten the social and demographic stability of developing countries. The pursuit of cloning tests would therefore merely aggravate those countries' problems, and the resources assigned to such tests should rather be invested in sustainable development.
2. **Mr. Amurani-Phiri** (Malawi), associating himself with the statement made by Morocco on behalf of the Group of 77 and China, said that advantages and risks were inherent in all technologies; before adopting a collective decision on the question of cloning, States must consider the question of ethics. While having more urgent problems to deal with, such as malaria, malnutrition and AIDS, Malawi was well aware that any technological advance would affect it in one way or another. What was most worrying was that countries often found themselves powerless in face of technological advances because they possessed neither the legal instruments needed in order to ensure that good use would be made of new developments nor the means of controlling their effects. At the time of the famine of 2002 and 2003, the offer of food aid in the form of genetically modified corn had taken his country by surprise.
3. After reviewing various aspects of genetic engineering, he summed up his delegation's position as follows: reproductive cloning should not be authorized, and neither should be interventions upon the human somatic line for the purpose of improving the human race; cloning for therapeutic purposes might prove useful, but only subject to the strictest controls; human embryos should not be created for research or therapeutic purposes; sales of human ovules should be prohibited, but donations to known persons might be authorized on a case-by-case basis; the United Nations should assist developing countries, including Malawi, to acquire means of surveillance over human cloning activities and should contribute towards the drafting of rules and international legal instruments on human cloning. His country hoped that Member States would rapidly agree to invite the Ad Hoc Committee to embark upon the drafting of an international convention.
4. **Ms. Uluiviti** (Fiji) said that the consideration of the question of cloning had to be based not only on reasoning and ethics but also on the new concepts of the rights of the child, women, indigenous peoples and handicapped persons.
5. Cloning would benefit only those countries that were already developed and wealthy. The poor would derive no advantages whatever. Women, especially those in developing countries, would yet again bear the heaviest burden, since it would be they that would produce the necessary ovules as well as being the first to suffer the inevitable losses in terms of public health and social development. Cloning would therefore run counter to the United Nations aim of reducing global imbalances and would be inconsistent with the Organization's development programme. What was more, attempts were being made in some quarters to use the cloning issue in order to divert attention from the development programme and from commitments entered into at major conferences and summit meetings.
6. Science had value only if it served the purpose of development. For that reason it would be greatly preferable to invest in research on the cloning of adult stem cells with a view to finding means to prevent or cure certain diseases, and to release resources and scientific skills for other research, aimed in particular towards the development of knowledge, medicine and traditional sciences, which had long been available to the developed countries but whose marketing had never benefited the native populations to which they belonged.

7. Draft resolution A/C.6/58/L.2 took account of the many uncertainties still outstanding; it was measured and compatible with the United Nations development programme; while imposing a general prohibition, it left the door open for research that was not contrary to human dignity.

8. **Mr. Dhakal** (Nepal) said that, on an issue as vital as that of cloning, mankind had to seek consensus. The absence of a common approach was extremely prejudicial to countries without the technical or academic equipment needed in order to adopt decisions in full knowledge of the facts.

9. Practically all nations were agreed that human reproductive cloning should be completely prohibited, that research on stem cells should continue and that an international convention should be drafted. But many questions still remained unanswered. Was the therapeutic cloning of embryos the best way of finding remedies to certain diseases for which no cure existed today? Could adult stem cells be used to achieve that result? And if the cloning of embryos were permitted, would it be possible to prevent abuses?

10. Nepal deplored the fact that the work of the Working Group had failed to lead to agreement on a negotiation mandate, and supported the Group's recommendation that the Committee continue to examine the question. The international community had to provide itself as soon as possible with a convention completely prohibiting human reproductive cloning. Negotiations could begin at once on matters that already commanded a consensus; so far as other issues were concerned, scientific discoveries in the coming years would perhaps help to attain a common position. In any event, all social, ethical, legal and economic aspects of the problem as well as the prospects of developing countries had to be taken into consideration.

11. **The Chairman** announced that the Committee had completed its consideration of agenda item 158 (International convention against the reproductive cloning of human beings).

#### **Agenda item 150: Convention on the jurisdictional immunities of States and their property (A/58/22)**

12. **Mr. Hafner** (Chairman of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property) introduced the report of the Ad Hoc Committee on the work of its 5th plenary meeting

(A/58/22) and reminded members of the Ad Hoc Committee's terms of reference. Considerable progress had been made, as a result of which all outstanding issues - some of which had been on the agenda of the International Law Commission for 25 years - had been settled. That success would not have been possible if delegations had not shown a genuine spirit of compromise despite the difficulties that such an approach involved for some among them.

13. He invited the members of the Sixth Committee to proceed without delay to the consideration of the report.

14. **Mr. Nesi** (Italy), speaking on behalf of the European Union, recalled that at its last meeting the Ad Hoc Committee had discussed and resolved all the main outstanding issues concerning both the draft articles under consideration and the understandings, and had then proceeded to adopt both texts. At the same time, the Ad Hoc Committee had recommended that the General Assembly take a decision on the future form of the draft articles.

15. That success had come at the conclusion of long and difficult negotiations. The European Union was convinced that the moment had now come to incorporate the draft articles and the understandings in a legally binding instrument that would guarantee true legal security.

16. The European Union supported the idea of setting up an ad hoc committee to draft the preamble and final clauses of such a convention. The ad hoc committee would not be called upon to reconsider the two texts already adopted, which would form an integral part of the convention, e.g. in the form of an annex. The European Union was prepared to take part in drafting the necessary provisions.

17. **Mr. Eriksen** (Norway) said that the Ad Hoc Committee's adoption of the draft articles and understandings marked a decisive stage in the codification of a set of universally recognized laws.

18. The draft articles and understandings constituted a well-crafted and balanced whole that would ensure the necessary legal security for States, and more particularly for their courts of law. His delegation did not believe that a fundamental reexamination would result in improving the draft as adopted, and did not deem it appropriate to postpone taking a decision on the form the draft would eventually take.

19. Norwegian courts, unlike those of many other States, were not in the habit of pronouncing themselves on the subject of the scope of the jurisdictional immunity of States. Rather than proceed on the basis of the national legislation as being sovereign in the matter, they interpreted international law in order to determine to what extent the national laws could be applicable to other States. The adoption of an instrument governing matters of such importance would greatly facilitate the courts' task.

20. Norway favoured the adoption, if possible at the current session, of a convention based on the compromise agreed upon by all delegations. Given the short time available, the Ad Hoc Committee ought to meet not later than the beginning of 2004 with a view to adopting the preamble and final clauses, so that the convention might be adopted at the fifty-ninth session of the General Assembly.

21. **Mr. Ruiz-Rosas** (Peru), speaking on behalf of the countries of the Rio Group, expressed great satisfaction with the adoption of the draft articles on jurisdictional immunities of States and their property, which represented a considerable reinforcement of legal security.

22. The countries of the Rio Group appreciated the fact that their concerns and aspirations had been taken into consideration throughout the negotiations. While considerable progress had been achieved, a decision on the form of the proposed instrument was still outstanding. In that connection, the Rio Group countries favoured the choice of an international convention which, being a binding instrument, would provide a solid basis for the compromise reached.

23. **Mr. Bliss** (Australia) said that his delegation approved the Ad Hoc Committee's recommendation that the General Assembly should decide upon the form to be taken by the draft articles on jurisdictional immunities of States and their property and favoured the adoption of a convention based on the draft articles and understandings, as reproduced in the annex to the Ad Hoc Committee's report.

24. The draft needed to be supplemented by a preamble and final clauses, including a general escape clause to govern the relationship between the articles and other international agreements touching upon the same subject. The final clauses, the drafting of which should be entrusted to the Ad Hoc Committee, should include an article specifying that the understandings

formed an integral part of the convention. The draft convention ought to be adopted at the next session of the General Assembly at the latest.<sup>25</sup> **Mr. Yamada** (Japan) observed that the draft articles as adopted were the result of a compromise. Even if the draft did not satisfy every State, his delegation was convinced that a better result could not have been accomplished. The establishment of a uniform international regime guaranteeing stability in relations between States was urgently needed. Accordingly, Japan would wish the General Assembly to adopt the draft articles in the form of a convention. He hoped that the Ad Hoc Committee would be reconvened for the purpose of drafting a preamble, final clauses and a simple clause on the settlement of disputes.

26. **Mr. Liu Zhenmin** (People's Republic of China) hoped that delegations would continue to manifest a will for consensus, so that the draft articles would take the form of a legally binding instrument, namely, an international convention.

27. His delegation wished to point out, however, that the text was not as satisfactory or perfect as it might have been. Owing to the numerous lacunae existing in most national legislations, practice differed greatly from one country to another. Moreover, there were also incompatibilities between the practice and the applicable national laws and regulations. Globalisation and the intensification of trade and economic cooperation meant that conflicts between legal regimes governing jurisdictional immunities were bound to multiply. The adoption of an international convention should therefore assist States in regulating and standardising their practice in the interests of avoiding legal conflicts.

28. His delegation welcomed the European Union's position in favour of an international convention. However, the additional conditions proposed by the European Union called for more careful consideration. If the European Union's proposal were to be adopted, the question would arise whether the text of the understandings could indeed form an integral part of the convention, the wording of some of them precluding the possibility of their integration as they stood. Furthermore, if contradictions were found to exist in the relationship between the future convention articles and the understandings, the need might well arise to envisage formulating some new ones, it being understood that the present draft articles constituted an autonomous text. His delegation supported the

Japanese delegation's proposal for a new meeting of the Ad Hoc Committee to prepare a comprehensive and definitive draft convention.

29. **Mr. Hahn Myung-jae** (Republic of Korea) said that his delegation was in favour of the adoption of the draft articles in the form of a convention and, to that end, would support the convening of a meeting of the Ad Hoc Committee in the spring of the following year. It should, however, be made clear that the Committee would not be called upon to reconsider the draft articles but only to reach agreement on a preamble and final clauses.

30. In order to speed up the proceedings, he suggested that the Secretariat be requested to prepare drafts of a preamble and final clauses in time for Member States to take cognizance thereof and submit those drafts to the Ad Hoc Committee for consideration.

31. **Mr. Rosand** (United States of America) said that the adoption of the draft articles by the Ad Hoc Committee represented a great step forward. Even if some views continued to diverge, it was increasingly agreed that there was a need to restrict the possibility of States and State companies invoking jurisdictional immunity before the courts of another State, particularly in matters of trade.

32. The draft articles were the concretization of what was known as the restricted immunity theory, which meant that when a State engaged in a commercial transaction with a national of another State, it could not invoke its sovereign immunity before a court of that State if complaints relating to the said transaction fell within that court's jurisdiction. The draft articles also specified that States could not invoke absolute immunity in cases of personal injury or damage to property that were attributable to them and that had occurred in the territory of the other State, or in connection with rights or interests pertaining to real estate. His delegation considered that those rules were good and should be approved.

33. However, he was disturbed to note that the Ad Hoc Committee's wording sometimes lacked precision. With regard to review proceedings, the articles were not intended to challenge the general rule whereby the courts of a State were not competent to impose reparations or to dictate the conduct of another sovereign State. At the same time, the draft articles should not be capable of interpretation as limiting the possibility for a court to have recourse to a review in

order to protect the integrity of its own proceedings if the other State decided not to claim sovereignty and to take the matter to court.

34. With respect to jurisdictional immunity for personal injury or damage to property, the wording adopted by the Ad Hoc Committee failed to meet certain questions connected with State obligations deriving from widely accepted international standards in matters of compensation to victims of prohibited acts. Lastly, the definition and scope of the term "commercial transactions" were not sufficiently precise, and neither were the provisions relating to the jurisdiction of the host State in respect of the internal affairs of embassies and consulates. For those reasons, his delegation continued to think that the General Assembly should adopt the draft articles in the form of a non-binding instrument, and that, taking into account the development of practice in the field concerned, States should be allowed more time to consider the matter. If the form of a convention were decided upon, a meeting of the Ad Hoc Committee should be convened for the purpose of careful consideration of the wording of the preamble and final clauses.

35. **Mr. Tarabrin** (Russian Federation) welcomed the excellent results of the work of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property and expressed the view that the draft articles should serve as the basis for a convention. With the requisite political will, the convention could already be adopted at the current session of the General Assembly; however, in view of the time constraints, his delegation would agree that the Ad Hoc Committee should be convened early in 2004 in order to complete its work. The text of the articles having been agreed upon, only the preamble and final clauses still remained to be considered. As for any notes relating to the interpretation of certain aspects of the articles, they could appear in an annex to the convention.

36. Inasmuch as the draft articles reflected a delicate balance between the interests of various participants in the negotiations, the convention should contain provisions prohibiting reservations or permitting them only in respect of certain articles. It was also desirable that a procedure should be provided for the settlement of disputes as to its interpretation or implementation. Referring such disputes to a special arbitration tribunal - the details of whose establishment and operation would be defined in an optional protocol or an annex to

the convention - would be the quickest and simplest solution.

37. The Russian Federation was willing to be flexible and to do everything in its power in order to facilitate the rapid adoption of a convention.

**Agenda item 154: International Criminal Court**  
(continued) (A/58/372 and A/C.6/58/L.14)

*Draft resolution A/C.6/58/L.14*

38. **Mr. Peersman** (Netherlands) introduced draft resolution A/C.6/58/L.14 on behalf of its sponsors. In the first preambular paragraph of the English text, the words "49/53 of 9 December 1993" should be replaced by "49/53 of 9 December 1994", and the words "without delay" should be inserted after the words "to consider" in operative paragraph 2.

*Draft resolution A/C.6/58/L.14 was adopted.*

**Agenda item 151: Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session** (continued) (A/58/17, A/C.6/58/L.11 and A/C.6/58/L.12)

*Draft resolution A/C.6/58/L.11*

39. **Mr. Marschik** (Austria), introducing draft resolution A/C.6/58/L.11 on behalf of its sponsors, said that the following countries had become co-sponsors: Afghanistan, Armenia, Costa Rica, Croatia, Mongolia, Portugal, Russian Federation, Spain, Tunisia and Ukraine. He drew particular attention to the sixth preambular paragraph, which mentioned the proposals made by the Secretary-General with a view to strengthening the Commission's secretariat, and to operative paragraphs 1 to 4, which noted the progress achieved by the Commission in its work, as well as to operative paragraph 6, which reaffirmed the importance of training and assistance in the field of international trade law.

*Draft resolution A/C.6/58/L.11 was adopted.*

*Draft resolution A/C.6/58/L.12*

40. **The Chairman** drew attention to draft resolution A/C.6/58/L.12 concerning standard legislative provisions of the United Nations Commission on

International Trade Law on privately financed infrastructure projects.

*Draft resolution A/C.6/58/L.12 was adopted.*

**Agenda item 128: Administration of justice at the United Nations** (continued) (A/57/736 and A/C.6/58/L.7)

*Draft resolution A/C.6/58/L.7*

41. **The Chairman** drew attention to draft resolution A/C.6/58/L.7 as orally revised by the Bureau. Recalling that at the 9th meeting of the Committee the representative of the Syrian Arab Republic had asked for further information on the action expected of the Committee, he said that according to the letter addressed to him by the President of the General Assembly on 19 September 2003 (A/C.6/58/1), the Assembly had decided, at its second session, to allocate the agenda item entitled "Administration of Justice at the United Nations" to the Fifth Committee for its consideration and to the Sixth Committee for the sole purpose of considering the question of an amendment to the statute of the United Nations Administrative Tribunal. The Statute had already been amended twice, at the Sixth Committee's recommendation, by General Assembly resolutions 55/159 and 52/166. In consequence, the same procedure should be followed in connection with the amendment arising from resolution 57/307, a resolution to that effect being adopted by the General Assembly at the recommendation of the Sixth Committee. The first step would be for the Committee to take a decision on draft resolution A/C.6/58/L.7, which he would then communicate to the Chairman of the Fifth Committee. It should be noted that the draft had been orally revised and that the second sentence of paragraph 1 of article 3 of the statute, as amended, would read as follows:

"Members shall possess judicial experience or any other relevant legal experience in the field of administrative law or its equivalent within the member's national jurisdiction."

*Draft resolution A/C.6/58/L.7 was adopted.*

*The meeting rose at 4.35 p.m.*



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## Sixth Committee

### Summary record of the 13th meeting

Held at Headquarters, New York, on Thursday, 23 October 2003, at 10 a.m.

*Chairman:* Mr. Becker (Vice-Chairman) ..... (Israel)

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Agenda item 150: Convention on jurisdictional immunities of States and their property (*continued*)

Agenda item 154: International Criminal Court (*continued*)

Agenda item 155: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*)

Agenda item 157: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel

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03-57708 (E)



*In the absence of Mr. Baja (Philippines), Mr. Becker (Israel), Vice-Chairman, took the Chair.*

*The meeting was called to order at 10 a.m.*

**Agenda item 150: Convention on jurisdictional immunities of States and their property (continued)**  
(A/58/22)

1. **Ms. Nguyen Thi Van Anh** (Viet Nam) said that, as a result of compromise following a long negotiation process, the draft articles contained in the report of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property (A/58/22) took into account the views of different groups of States. The early adoption of the articles in the form of an international convention would make a further contribution to the process of codification and progressive development of international law. Her delegation therefore supported the proposal to convene the Ad Hoc Committee in 2004 with a clear mandate to finalize the preamble and final clauses for a future convention.

2. **Mr. Hoffmann** (South Africa) said that the finalization of the draft articles marked the culmination of some 25 years of work by the International Law Commission and over 10 years of work by the Sixth Committee. Notwithstanding the difficulties in accommodating different legal and political systems, consensus had been reached. The need for uniform international rules on the jurisdictional immunities of States and their property was underscored by the increased participation of States and their agencies in international commercial ventures and the impact of globalization, which emphasized the disparities between developed and developing countries.

3. Although South African legislation would have to be amended to bring it into line with the draft articles, his Government was prepared to do so in the conviction that the draft articles presented a workable solution. His delegation agreed that the draft articles should be embodied in a convention, rather than in a General Assembly resolution or a model law. Not all his Government's positions were reflected in the draft articles but compromise had been required in order to finalize them. Common positions would have been easier to reach if the intent had been for the draft articles to be adopted as "soft law". To turn the draft articles into a draft convention, it might be necessary to reconvene the Ad Hoc Committee for a final session in

2004, on the clear understanding that it was not to reopen debate on substantive issues.

4. **Mr. Ilnytskyi** (Ukraine) said that uniform rules in the sphere of jurisdictional immunities of States and their property were important in providing stability and predictability in transactions between States and private parties, particularly in view of the growing direct participation of States in international trade.

5. The Ad Hoc Committee had made substantial progress and all that remained was to give the draft articles a generally acceptable practical form. His country strongly favoured adopting the draft articles in the form of a convention, in order to ensure their legally binding character and direct application by national courts, and considered the idea both feasible and realistic. There was enough evidence of custom and practice to make such codification possible, and there were enough conflicting unilateral solutions to demonstrate its necessity. The adoption of a convention would limit the proliferation of differing national regulations that might damage intergovernmental relations and international trade. Although the adoption of a model law would have certain advantages, such an approach would have insufficient legal weight and would give the impression that the international community was currently unable or unwilling to codify a matter that properly belonged in the sphere of international law. Ukraine looked forward to the work of the Ad Hoc Committee in 2004 on a preamble and final clauses of a draft convention for adoption at the following session of the General Assembly.

6. **Mr. Lavalle-Valdés** (Guatemala) said that his delegation shared the views expressed by Peru on behalf of the Rio Group. The success of the Ad Hoc Committee in completing the draft articles on jurisdictional immunities of States and their property was especially welcome since the General Assembly, in its resolution 57/16, had rather dramatically asked it to make "a final attempt" to complete its task, implying that if it were unsuccessful the effort would have to be abandoned.

7. From the standpoint of a small country, one of many, that did not have an abundance of legislation or precedent on the subject of State immunity and would be obliged to fall back on a diffuse and kaleidoscopic body of international customary law if a case should arise in that regard, his delegation would welcome an

international instrument that would regulate the matter with sufficient clarity and scope.

8. The draft articles formulated by the Ad Hoc Committee formed the best available basis for such an instrument. Admittedly, they were not perfect and did not satisfy all States, partly because some States already had their own legislation on the subject or were parties to the European Convention on State Immunity. However, those States surely constituted a small minority of the States Members of the United Nations. Nor could the invitation issued in article 37 of the European Convention to non-European States to become parties to the Convention be considered a realistic way of universalizing the regime.

9. It should be borne in mind, moreover, that none of the international conferences held to adopt a convention based on draft articles elaborated by the International Law Commission had adopted them without changes. Such a conference would provide the opportunity for States to push for amendments to address their individual concerns. Lastly, parties to multilateral conventions could protect their interests by formulating reservations.

10. **Mr. Rao** (India) said that the draft articles represented a fair and delicate balance among the concerns expressed by Member States. Although they did not satisfy all delegations, in view of the considerable efforts invested in reaching the compromise the consensus should be preserved. His delegation would support the adoption of the draft articles in the form of a convention. Only a legally binding instrument would provide uniformity and certainty as to the applicable rules and clarify the scope and nature of the immunities of States and their property in legal proceedings. Such an instrument would make a significant contribution to the development of international trade law, to the benefit of developing countries. Since further work would be required on the preamble and final clauses for a convention, his delegation supported the proposal that the Ad Hoc Committee should be reconvened, subject to a time limit.

11. **Mr. Rodiles** (Mexico) said that he had noted widespread support for the adoption of the draft articles in the form of a convention. Mexico had consistently stressed the need for a binding legal instrument on jurisdictional immunities of States to fill the legislative gap in that area in many Member States and to assist

their courts. His delegation therefore supported the establishment of an ad hoc committee with a mandate to elaborate the preamble and final clauses of such a convention, including a clause concerning the relationship between the articles and other international agreements on State immunity.

12. With regard to the "understandings" to be found in annex II to the report of the Ad Hoc Committee (A/58/22), their role was to serve as an interpretative guide for the benefit of the national authorities implementing the articles and the courts interpreting them. Once agreed upon, they should find a place in the *travaux préparatoires* of the convention. On the subject of reservations, in principle his delegation favoured allowing their formulation. Since the rules of the convention would be applied primarily by national authorities, States should be granted a certain latitude. Lastly, there should be a clause on the peaceful solution of disputes, as it would certainly be needed.

13. **Mr. Hmoud** (Jordan) took note of the recommendation in document A/58/22 that the General Assembly take a decision on the form of the draft articles. In view of the complexities involved in negotiating the outstanding issues in the past, and the balance in the agreed text of the relevant articles, his delegation supported the adoption of the draft articles by the General Assembly. It nonetheless considered the better approach to be the adoption of the articles in the form of a declaration.

14. Compromises on contentious issues had led to ambiguities in the text of certain articles. He drew attention to article 19, paragraph (c), regarding measures of constraint which might be taken against a property that had a connection with the entity against which the proceeding was directed. Unfortunately, the understandings set out in annex II to document A/58/22 did not provide the necessary clarification of the term "has a connection" or the term "entity". Furthermore, the word "entity", as defined in the understanding on article 19, included the State, yet at the same time included other entities which enjoyed independent legal personality. In that regard, the understanding did not provide qualifications for the legal independence of such entities.

15. The term was also inconsistent with the definition of "State" in article 2, which would add to the confusion of national jurisdictions when they decided to implement draft article 19, paragraph (c). The two

terms were meant to be different, yet such a difference was not elaborated upon in the understanding, and might only be understood by those who had taken part in the "informal informals". For that reason, his delegation considered that the understandings in annex II did not qualify as proper *travaux préparatoire* for the purposes of an internationally binding instrument. It would be better to adopt the draft articles in the form of a declaration and defer the issue of a convention until such time as State practice and international jurists could provide the necessary clarifications.

16. His delegation did not object to the compromise on the text of article 11, paragraph 2 (d), concerning dismissal or termination of employment. That should not be interpreted as acquiescence to the content of the provision. The understanding reached on that paragraph, as reflected in annex II, should not have the effect of allowing the authorities of one State to make judicial determinations regarding the political decisions of another State, including on matters of the latter's national security. When heads of State or Government or ministers for foreign affairs invoked national security, their determination should not be subject to judicial review in another State, especially in employment proceedings. It was for that reason that his delegation was not in favour of including that part of annex II in the understandings. His delegation would assert its position concerning article 11, paragraph 2 (d), and in relation to the relevant part of annex II, in the event that the draft articles were adopted in the future.

17. **Mr. Medrek** (Morocco) said that, during its session in February 2003, the Ad Hoc Committee had succeeded in reaching consensus on a number of substantive points that had been perennial subjects of debate, thereby paving the way for the adoption of the draft articles. His delegation would like to see the draft articles embodied in an acceptable international instrument. In view of the recent increase in lawsuits against States and their property, it was high time to adopt a uniform international regime that would provide stability in relations among States and confidence and security in the area of jurisdictional immunities. Morocco supported the conclusion of a convention that would put an end to the proliferation of diverse national laws on the subject and promote international trade through legal certainty and homogeneity. It was in favour of setting up an ad hoc committee to finalize the preamble and final clauses of

such a convention and was ready to participate actively in that task.

18. **Mr. Dhakal** (Nepal) said that a legally binding instrument that would overcome the lack of harmony in the existing norms governing State practice and customary international law in the area of jurisdictional immunities of States and their property was long overdue. It was a significant achievement that the Ad Hoc Committee had finally resolved all outstanding substantive issues with regard to the draft articles recommended by the International Law Commission in 1991. His delegation urged that the Ad Hoc Committee should continue its work on the format of the instrument, including a preamble and final clauses, in a spirit of compromise and flexibility.

#### **Agenda item 154: International Criminal Court** (continued) (A/C.6/58/L.14)

19. **The Chairman** invited the Committee to take action on draft resolution A/C.6/58/L.14, as orally revised at a previous meeting.

20. **Mr. Rostow** (United States of America) said that his Government's opposition to the Rome Statute of the International Criminal Court remained unchanged. Nothing in the Court's structure suggested that it would avoid political trials; moreover, it was an institution of unchecked power with serious problems in the areas of jurisdiction and due process, including with respect to multiple jeopardy. The Court did not require consent or comity, which were essential operating principles of international law, in order to exercise jurisdiction. The Rome Statute did not provide sufficient opportunity for Security Council oversight and suggested that the Assembly of States Parties was competent to define aggression, a matter left to the Council by the Charter of the United Nations.

21. However, the United States had a record second to none in holding its officials accountable for war crimes, genocide and crimes against humanity; supporting properly constituted international war crimes tribunals; and training members of its armed forces in their obligations under international law. Properly understood, his Government's lack of support for the Court reflected its commitment, not its opposition, to the rule of law.

22. He reiterated his delegation's support for excluding from the Court's jurisdiction personnel from States which were not parties to the Rome Statute in

respect of acts or omissions connected with their participation in United Nations missions since standard bilateral status-of-forces agreements provided for the exclusive jurisdiction of the sending State over its military personnel.

23. He did not agree with those who argued that the language and negotiating history of article 16 of the Rome Statute, under which the Security Council had addressed that issue, showed that it had been intended to address only specific, ongoing cases; Council resolutions 1422 (2002) and 1487 (2003) represented compromises between the views of those who supported the Court and those who did not.

24. The United States did not seek to undermine the Court and respected the right of States to become parties to the Rome Statute; its own decision not to do so should also be respected.

25. *Draft resolution A/C.6/58/L.14 was adopted.*

26. **Mr. Rosand** (United States of America) reiterated that his delegation disassociated itself from the adoption of the draft resolution.

**Agenda item 155: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization**  
(continued) (A/C.6/58/L.17)

27. **Mr. Kuzmenkov** (Russian Federation) introduced the draft resolution on implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions (A/C.6/58/L.17) and announced that Chile, Egypt, The former Yugoslav Republic of Macedonia, Sierra Leone and Uganda had become sponsors.

**Agenda item 157: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel** (A/58/52, A/58/187, A/58/302 and A/C.6/58/L.16)

28. **Mr. Wenaweser** (Liechtenstein), Chairman of the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel and of the Working Group on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel, introduced the reports of those bodies (A/58/52 and A/C.6/58/L.16).

29. The Ad Hoc Committee had held its second session in March 2003 pursuant to General Assembly resolution 57/28 and had continued the discussion of measures to enhance the existing protective legal regime for United Nations and associated personnel. It had considered a draft protocol to the Convention, proposed by New Zealand, which would provide for the automatic application of the Convention to all United Nations operations or presences; amendments thereto, proposed by the European Union; and a proposal by Pakistan on the declaration of exceptional risk. Discussion had focused on the definition of "United Nations operations" and the definition of "risk".

30. There had been no general agreement on the need to extend the existing protective legal regime to all United Nations operations and presences, regardless of the element of risk involved in their activities. Divergent views had also been expressed on whether to implement practical measures or to amend the Convention in order to eliminate the requirement of the declaration of exceptional risk. The Ad Hoc Committee had recommended, *inter alia*, that its mandate should be renewed for 2004.

31. The Working Group had made progress and, more importantly, had worked in a spirit of openness and dialogue. It had held two formal meetings and several informal consultations on 13, 14 and 17 March 2003. As mandated by the Sixth Committee, it had continued the work of the Ad Hoc Committee and had considered the question of expanding the scope of the existing legal protection regime for United Nations and associated personnel. Its work had been based on some of the proposals submitted to the Ad Hoc Committee at the latter's second session, a proposal by Jordan submitted to the Working Group at its current session, and the relevant reports of the Secretary-General; it had also had before it a proposal submitted by Costa Rica for consideration at a later stage.

32. Delegations had agreed in principle on the need to expand the scope of legal protection under the Convention and had considered it useful to give a more precise definition of the United Nations operations to which an expanded legal regime would apply, reflecting the notion of risk in order to dispense with the requirement of the declaration of exceptional risk; the Jordanian proposal had been welcomed as a valuable contribution in that regard. It had also been agreed that any new legal regime should not disturb the

existing regime under the 1994 Convention. There had been strong support for drafting a protocol, despite reservations as to its nature and eventual relationship to the Convention. The recommendation adopted by the Working Group took into account the views of all delegations and would allow for the continuation of their constructive work.

33. **Mr. Makayat-Safouesse** (Republic of the Congo) said that his Government was preparing to accede to the Convention and to the Rome Statute of the International Criminal Court; in the light of the large number of peacekeeping and humanitarian operations on the African continent, it attached great importance to the adequate protection of United Nations and associated personnel. He condemned the heinous attack on the United Nations office in Baghdad and was deeply concerned at the increasing number of such attacks, which were associated with the rise in indiscriminate acts of terrorism. States must rise above their differences and develop an effective system of protection so that United Nations and associated personnel could carry out their functions in safety.

34. His delegation therefore supported the effort to strengthen the Convention and the work of the Ad Hoc Committee and the Working Group. He particularly welcomed the spirit of cooperation and dialogue which had characterized the meetings of the Working Group, the valuable proposals made by the delegations of Jordan and New Zealand and the relevant report of the Secretary-General (A/58/187).

35. He agreed with the Secretary-General's comments on the factors which might weaken the Convention, especially the mechanism for invoking its protection regime. His delegation was considering with interest the idea of an additional protocol which would fill the gaps in the Convention regime and ensure its desired effectiveness and hoped that the recommended measures would be implemented as soon as possible. In particular, he welcomed the proposal to incorporate into status-of-forces and status-of-mission agreements key provisions of the Convention, such as the obligation to prevent attacks against members of United Nations operations and to establish such attacks as crimes punishable by law.

36. **Mr. Lauber** (Switzerland) said that his Government condemned the attack on the United Nations office in Baghdad and extended its sympathy to the victims' families. Switzerland contributed

personnel to United Nations operations and attached great importance to guaranteeing the safety of those involved. The Convention alone could not do so; its gaps must be filled and its scope of application extended.

37. He welcomed the constructive spirit displayed in the Working Group and the emerging consensus on the need to expand the scope of the Convention, dispense with the need for a declaration of exceptional risk and develop a new instrument in the form of an optional protocol; he hoped that a consensus text would soon be prepared on the basis of the proposal submitted by New Zealand. As the depositary State for the Geneva Conventions, Switzerland also attached great importance to the question of delineating the scope of application of the Convention and of international humanitarian law.

38. **Mr. Bliss** (Australia) said that he welcomed the adoption of short-term measures to improve the scope of legal protection of United Nations and associated personnel; as a result of the Committee's work, key provisions of the Convention had been included in status-of-forces, status-of-mission and host country agreements. However, it was also necessary to combat impunity for attacks against United Nations and associated personnel, as had been done for terrorism and crimes against humanity.

39. The Working Group had given the Committee a clear mandate to extend the scope of protection of the Convention, including by means of a legal instrument. Most delegations had acknowledged the existing shortcomings and, although differences remained, there was broad agreement that an expanded scope should not necessarily extend to all United Nations and associated personnel. His delegation would prefer to incorporate the element of risk through a reference to particular types of mission rather than to specific situations; the goal was to set a clear, objective threshold of applicability of an expanded scope of legal protection.

40. There appeared to be general agreement that the existing legal regime should not be weakened; his delegation therefore supported the drafting of an optional protocol as the focus of the Committee's future work. It would also welcome a new proposal which would synthesize the Working Group's discussions and the proposals already submitted.

41. While universal adherence to the Convention should be the ultimate objective, universality should be understood broadly as including both the accession of many more States and an expansion of the existing regime. He therefore encouraged States to become parties to the Convention if they had not yet done so.

42. **Ms. Geddis** (New Zealand) said that New Zealand condemned the violent and too often fatal attacks on United Nations and associated personnel in the field, which constituted an attack on the effectiveness and purposes of the Organization itself. The problem of impunity was of great concern; in only 22 of the 198 deaths of civilian personnel caused by malicious acts since 1 January 1992 had the Member State concerned advised the Secretariat that it had taken legal action. She therefore welcomed the adoption of Security Council resolution 1502 (2003); however, legal measures also had a role to play in the protection of personnel.

43. She welcomed the recent increase in the number of States, including host States, which had or planned to become parties to the Convention. She also encouraged the Secretary-General to continue his efforts to ensure that the key provisions of the Convention, which New Zealand and Ukraine had had a lead role in developing, were incorporated into status-of-forces, status-of-mission and host country agreements.

44. However, events of recent years had demonstrated that the coverage and application of the Convention remained fragmented and responded inadequately to the growing number of non-peacekeeping missions. The "declaration of risk" mechanism was a major limitation and the definition of "United Nations operation" did not reflect the range of those operations. The Convention should apply automatically to all United Nations field missions; her delegation was therefore in favour of developing a protocol to the Convention which would achieve that goal, including through preparation of an optional protocol on the basis of the draft which New Zealand had submitted to the Ad Hoc Committee. Lastly, she welcomed the Working Group's recommendation that the Ad Hoc Committee should be reconvened with a mandate to expand the scope of legal protection under the Convention, including by means of a legal instrument.

45. **Ms. Kalema** (Uganda) said that, in view of the alarming increase in attacks on United Nations personnel all over the world, protection for such personnel must be guaranteed. The question, however, was how far the scope of the Convention should be broadened. Although progress had been made in the Working Group, additional proposals had been made which should be further considered during the drafting of a future legal instrument. There seemed to be growing agreement that the requirement of a declaration by the General Assembly or the Security Council that an exceptional risk existed should be lifted, but her delegation would like to see an element of that criterion retained. On the other hand, the proposed introduction of the word "presences" was unnecessary, since all the possible categories covered had already been adequately provided for under article 1 (a), (b) and (c) of the Convention. Indeed, the word "presences" could imply that protection should be extended to cover permanent United Nations headquarters and offices, and other organizations, which did not come under the Convention and were in any case covered by agreements entered into by the host country. Removing the requirement of a declaration or incorporating the word "presences" would impose an excessive obligation on the host country. A crime committed against United Nations personnel in times of peace would be punishable like any other crime.

46. Her delegation was open to the Australian proposal that the focus should be on categorizing the personnel to be covered rather than on situations. The proposal would, however, need to be seen in writing. As for the form that the instrument should take, her delegation would favour an optional protocol, which would maintain the integrity of the Convention while giving Member States an option as to whether to be bound by the Convention alone or by the Convention and the protocol together. Lastly, the Secretary-General should improve practical measures of protection on the ground: prevention was better than cure.

47. **Mr. Rosand** (United States of America) said that his delegation continued to support the Convention, which was currently before the United States Senate awaiting advice and consent, having been identified as a convention that the Senate should take up promptly. United Nations and associated personnel faced considerable risks in a variety of contexts around the world. The United States authorities were cooperating

with local authorities in Iraq to ensure that the terrorists who committed the appalling attack on United Nations personnel in Baghdad on 19 August 2003 should be located and held accountable.

48. With regard to the question of extending the application of the Convention, his delegation continued to be generally supportive. It continued to believe that a stand-alone protocol would be the most appropriate vehicle and that not all elements of the Convention would need to be included in a protocol of expanded scope.

49. **Mr. Khayaban** (Canada) said that the bombing of the United Nations headquarters in Baghdad was a further tragic reminder that working under a United Nations flag no longer ensured protection. United Nations and associated personnel were dedicated professionals who assumed great risk in order to meet urgent humanitarian needs and promote long-term stability and security in countries in or emerging from crisis. As staff continued to find themselves ever more a deliberate target of attack, including by terrorist groups, a greater commitment was required on the part of the international community to ensure their safety and security and bring the perpetrators of any such attacks to justice.

50. His delegation welcomed the unanimous adoption of Security Council resolution 1502 (2003) outlining steps to ensure the safety and security of humanitarian and United Nations and associated personnel. While complementing earlier such efforts by the Council, the resolution constituted a departure in one important respect: it noted the Council's intent to act and declare an exceptional risk to United Nations and associated personnel when presented by the Secretary-General with information to that effect.

51. States hosting such personnel, including humanitarian personnel, bore the primary responsibility for their safety and security and for prosecuting the perpetrators of attacks against them. In that context, it was regrettable that most States that had ratified the Convention on the Safety of United Nations and Associated Personnel were States which were less likely to host United Nations missions, and not States which benefited from the presence of peacekeepers and other United Nations staff. His delegation called upon those States that had not already done so to ratify the Convention as a matter of priority. It also continued to support the recommendation to the Secretary-General

to request States to report on measures taken to become a party to and implement the Convention.

52. His delegation urged States hosting United Nations peacekeeping operations to place a priority on the conclusion of status-of-forces, status-of-mission agreements and host country agreements which included provisions for the safety of such personnel and urged the Secretariat to make further progress in the conclusion of such agreements.

53. His delegation welcomed the establishment of the International Criminal Court and the resulting system wherein national and international jurisdictions would work together to ensure that intentional attacks on peacekeepers and other humanitarian personnel did not go unpunished. His delegation had worked to ensure that such attacks were made a war crime in the Rome Statute establishing the Court.

54. His delegation joined New Zealand in endorsing the Secretary-General's recommendation that a protocol to the Convention be developed that would provide an automatic trigger mechanism and include a wider range of United Nations operations than were currently covered automatically. It also welcomed the recommendation contained in the report of the Working Group (A/C.6/58/L.16) that the mandate of the Ad Hoc Committee be extended to expand the scope of legal protection under the Convention, including by means of a legal instrument. His delegation looked forward to further discussions that would define the term "United Nations operations" in a clear and objective manner, ensuring that there was no gap in the legal protection provided for United Nations and associated personnel.

55. **Ms. Ahn** (Republic of Korea) said that her delegation supported the reconvening of the Ad Hoc Committee early in 2004 with a mandate to expand the scope of legal protection under the Convention, including by means of a legal instrument. In addition to the three proposals submitted respectively by New Zealand, by Pakistan and by Greece on behalf of the European Union, the Working Group had received new proposals from Jordan and Costa Rica. Those initiatives would facilitate more focused and productive discussions.

56. There was broad support in the Committee for eliminating the declaration of risk requirement since it was hard to initiate and therefore not very effective in practice. Regarding the expansion of the scope of application, her delegation noted with appreciation the

suggestion that a new protocol should designate the types of operations that posed risks by nature, rather than situations which were sometimes difficult to define. However, the new protocol would need to prepare for the contingency of United Nations operations not normally associated with risks that found themselves in rapidly deteriorating situations, thereby meriting the protection of the Convention.

57. **Mr. Hmoud** (Jordan) said that the issue under consideration was complex. It was necessary to recall the reasons behind the compromise reached in the negotiation of the 1994 Convention. Delegations, concerned at the increasing rate of attacks on peacekeepers and those involved in humanitarian and other United Nations operations in risky situations, had decided to establish a special legal regime of protection that took the form of a law enforcement instrument. It was noteworthy that a trigger mechanism had been incorporated into the Convention for its application to operations other than peacekeeping. In that regard his delegation took note of the Secretary-General's reports on the matter (A/55/637 and A/58/187). It also took note of paragraph 5 of Security Council resolution 1502 (2003), in which the Council expressed its determination to issue the declaration of exceptional risk where appropriate and invited the Secretary-General to advise the Council where circumstances would support such a declaration. It was to be hoped that the Council would act on the matter.

58. The number of States parties to the 1994 Convention was limited. In order for the Convention to achieve universality, the number, which currently stood at 68, must increase significantly. The Committee should carefully study the reasons behind the hesitation of many States to become parties to the Convention. Most of those States were committed to taking all appropriate measures to prevent attacks on peacekeepers and relevant personnel and to investigate and prosecute such attacks under their national legal systems. However, the fulfilment of other obligations under the Convention, especially those relating to personnel other than peacekeepers, was a major concern for those States.

59. In order to overcome the obstacles in the way of achieving universality of the Convention and enhancing the scope of legal protection under that instrument, tangible steps must be taken to deal with the existing system of legal protection. Solutions must also be found to the problems impeding the application

of the Convention. To dispose of the requirement of a declaration of exceptional risk was one obvious solution, yet the key question was how to approach the issue. During the discussions in the Working Group, the general conviction had emerged that the scope of the Convention, if and when it was to be expanded, should cover only risky United Nations operations.

60. In that connection, his delegation had decided to submit a proposal containing elements to be included in any future instrument to expand the scope of protection under the Convention. The approach taken was to extend the protective regime under the Convention to those United Nations operations which needed it and to exclude those which did not. If the operation was conducted in a situation of armed conflict, it was by nature risky, and the protective regime of the Convention should apply. If the host State did not provide sufficient physical and legal protection to United Nations and associated personnel, the regime should also apply. Lastly, if the operation was not conducted in a host State, the regime should then provide the necessary legal protection.

61. The Jordanian proposal also tackled the concern of host and transit States in relation to violations of their national laws by personnel participating in United Nations operations. Considering that expanding the scope of the Convention beyond peacekeeping operations would mean that the new instrument would cover a large group of personnel, the proposal aimed to preserve the sovereign right of those States to exercise jurisdiction over violations of national law by such personnel. Such a right was, of course, preserved as long as the relevant State was not under another international obligation to the contrary.

62. **Mr. Barriga** (Liechtenstein) said that the international community had been reminded many times during the current year, and with particular horror on 19 August, of the vulnerability of United Nations staff worldwide. Everything possible must be done to improve all forms of protection for United Nations and associated personnel, who were united in their commitment to the goals, purposes and principles of the Organization.

63. Legal protection was not the only means of increasing the overall security of United Nations personnel, but it was an indispensable one. His delegation hoped that the momentum achieved by the

Working Group would be carried over to the work of the Ad Hoc Committee and lead to concrete results.

64. The current regime under the Convention on the Safety of United Nations and Associated Personnel should be improved in two areas. First, the scope needed to be expanded in order to cover a large number of United Nations presences. That should be achieved through a definition of United Nations personnel which was broader than the one in article 1 of the Convention and which eliminated the requirement of a declaration of exceptional risk.

65. Second, the legal consequences of that definition, namely, the obligations placed on host States, should be reviewed in order to achieve a reasonable balance between the valid interests of the host State in not being overburdened with preventive safety requirements and the equally valid interests of United Nations personnel in receiving adequate protection.

66. The reasons for the proposed changes were twofold. First, a convention which protected mainly United Nations staff members deployed for the purpose of maintaining or restoring international peace and security, who in many cases were equipped to defend themselves, was too limited in scope. In fact, in many cases such persons needed the convention's protection less than members of other United Nations presences which pursued other goals and which for that reason only were not protected by the convention. Second, a convention which placed on host States unnecessary burdens with questionable impact on the safety of United Nations personnel would remain limited in its ratifications and application.

67. The current Convention addressed two sets of obligations for host States: measures of protection to be taken before a potential attack and measures of mainly a judicial nature to be taken after an attack. A future regime should take into account the different nature of those two sets of measures. Only with respect to the first set of measures should there be a connection with the actual risk of an attack. It made sense to ask a State to take "appropriate" preventive measures, depending on the actual risk faced by the United Nations operation in question.

68. However, with respect to the second set of measures, no such differentiation should be made. Once a United Nations presence in the field had been attacked, the host State should exercise its jurisdiction, investigate, and cooperate with the international

community to bring the perpetrators to justice. It did not make sense to say that personnel engaged in low-risk operations should not be afforded such redress, arguing that they had faced a low risk. If such an attack occurred, then obviously the assessment of a low risk was erroneous. In such a scenario, the victims and their families should not be made to suffer a second time from the legal consequences of human error. Instead, all available measures should be taken to investigate the crime and deter future attacks.

69. **Mr. Løvald** (Norway) said that the disturbing trend of blatant disrespect for humanitarian workers noted by the Secretary-General in his report to the Economic and Social Council and in two reports submitted to the General Assembly (A/58/187 and A/58/344) had been exacerbated by the unprecedented magnitude and anti-United Nations hostility of the Baghdad massacre in August. The deliberate targeting of United Nations and humanitarian personnel for violence was alarming, and called for a concerted effort to reverse that trend, which ran counter to the most basic tenets of international humanitarian law. The reinforcement of the United Nations security management system, the Inter-Agency Security Management Network and its increasing cooperation with the Red Cross/Red Crescent movement and non-governmental organizations must continue. A climate of impunity was quite simply unacceptable.

70. In that regard, his delegation welcomed the establishment of the International Criminal Court, which represented a decisive step towards ending impunity for the most serious crimes of international concern. It urged all States that were not yet parties to the Rome Statute to consider ratifying or acceding to it without delay and to adopt implementing legislation.

71. His delegation was in favour of expanding of the scope of the Convention. The short- and long-term measures recommended by the Secretary-General in document A/55/637 were important measures aimed at improving and enhancing the existing protective regime. His delegation noted with satisfaction that the General Assembly had been able to agree on several short-term measures, particularly the recommendation to incorporate the Convention's key provisions into status-of-forces, status-of-mission and host country agreements. The primary responsibility for the security and protection of United Nations and associated personnel and humanitarian personnel lay with the Government hosting the United Nations operation

conducted under the Charter of the United Nations or under its agreements with the relevant organization.

72. The short-term measures recommended in General Assembly resolution 57/28 merely strengthened the protective regime under the Convention within its existing framework. He expressed appreciation to New Zealand for its proposal for a protocol to the Convention, which would extend the applicability of the Convention to all United Nations operations, along the lines of the Secretary-General's recommendations in document A/55/637.

73. His delegation expressed satisfaction at the progress made during recent meetings of the Working Group and hoped that the Ad Hoc Committee could meet in 2004 with a mandate to expand the scope of legal protection under the Convention by means of a legal instrument. His delegation would actively support the elaboration of an optional protocol, in particular, with a view to dispensing with a declaration of exceptional risk, which had proved to be an obstacle to the application of the Convention.

74. **Ms. Čačić** (Croatia) said that her country, as a contributor to six peacekeeping operations and a former host country, fully understood the dangers and security risks faced by personnel involved in such operations and the importance of an adequate legal framework for their protection. Her delegation welcomed the establishment of the Ad Hoc Committee. Although the Committee had begun its work less than two years earlier, some tangible results were already visible. General Assembly resolution 57/28 endorsed a number of practical steps to strengthen the protective regime. Her delegation noted with satisfaction that the Convention's core provisions were already being incorporated into status-of-forces or comparable agreements currently under negotiation.

75. Her delegation also welcomed the adoption of Security Council resolution 1502 (2003) reinforcing some of those practical measures and spelling out the duty of Member States to ensure that crimes against humanitarian personnel did not go unpunished.

76. Her delegation remained convinced of the need to address the substantive limitations of the existing legal regime under the 1994 Convention. In view of the changing nature of United Nations engagement in the field, which was not necessarily limited to peacekeeping, her delegation had become aware of the inadequately narrow preconditions for triggering the

application of the criminal law regime under the Convention. That was shown by the long list of civilians who had lost their lives over the past decade while performing services for the United Nations, annexed to document A/58/187, and the fact that in only 22 of those cases had a legal action followed.

77. Her delegation believed that it was necessary to expand the scope of the Convention to all United Nations operations and categories of personnel, regardless of the security situation prevailing at the time and place of the attack. It supported the Secretary-General's recommendation that serious consideration be given to dispensing with the need for such a declaration. Accordingly she welcomed the New Zealand proposal for the elaboration of an additional protocol, based on the principle of automatic application of the Convention to all operations.

78. **Mr. Guterres** (Timor-Leste) expressed concern that the number of perpetrators of malicious acts brought to justice around the world remained low in comparison to the number of civilian personnel killed in the performance of their duties.

79. The strength of the Convention lay in its universality and the commitment of States to implement its provisions. Timor-Leste hoped to ratify the Convention shortly. In that context, he welcomed the progress made in discussing expansion of the scope of the regime and hoped that the current momentum would be maintained. It was most important to strengthen the protection regime. He stressed that locally recruited personnel were particularly vulnerable to attacks, as had been demonstrated in Timor-Leste in 1999. His delegation therefore supported the New Zealand proposal (A/58/52, annex 1), which, by removing the risk trigger mechanism, would go a long way towards enhancing the protection of United Nations and associated personnel.

80. **Ms. Amadi** (Kenya) said that the heinous attack on United Nations headquarters in Baghdad was a reminder of the daily risks faced by United Nations and associated personnel in many parts of the world. Her Government was a key contributor to United Nations peacekeeping operations and also hosted a number of United Nations programmes and agencies. It therefore supported initiatives to enhance protection for United Nations and associated personnel. In that connection, it was gratifying that the proposals to that end were geared towards building a consensus. Her delegation

supported the recommendation that the Ad Hoc Committee's mandate should be renewed for 2004.

81. With only 68 States parties, the Convention had yet to become universal in character. Consideration should therefore be given not only to enhancing protection under the Convention but also to removing the obstacles that kept States from joining it. Kenya itself was at an advanced stage of the ratification process.

82. **Mr. Bocalandro** (Argentina) said that safety concerns should be incorporated in every aspect — operative, financial, legal and other — of United Nations activities. To that end, a uniform, consensual and universally agreed approach should be adopted. Only thus could a protection regime for United Nations personnel be successful. A lack of consensus would mean that the legal rules would not be observed.

83. Better operative protection was required, and better legal protection would ensure that the ultimate aim of punishment — retribution — could be met and would have a deterrent effect. It was a matter of concern that so few crimes were brought before the courts under the Convention as it stood, with the result that the level of impunity was unacceptably high. The legal regime should protect all personnel and be universally acceptable.

84. As for the form that the expanded scope of the Convention should take, his delegation would be in favour of an optional protocol, in order to maintain the integrity of the Convention. A number of excellent contributions had been made, notably by the representatives of New Zealand, Pakistan, Jordan, the European Union and Costa Rica, which would provide a basis for the proposals that would further advance the process of enlarging the scope of the Convention.

85. **Mr. Kobayashi** (Japan) said that he welcomed the significant progress made in clarifying the possible expansion of the scope of legal protection under the Convention. In that regard, he also welcomed the suggestion by the representative of New Zealand on the extent to which the scope of protection could be expanded. The proposal by Jordan regarding the inclusion of peacekeeping operations in the list of situations where the Convention would be applicable had also greatly contributed to the Working Group's deliberations. A good basis for further discussion had been established and further exploration was essential. His delegation therefore supported the renewal of the

mandate of the Ad Hoc Committee: the current momentum should not be lost.

86. **Mr. Nesi** (Italy), speaking on behalf of the European Union, the acceding countries Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia and the associated countries Bulgaria and Romania, expressed strong condemnation of the attack on the United Nations headquarters in Baghdad and requested that strong measures should be taken to arrest and punish those responsible. The attack had not only caused the loss of human lives but also seriously jeopardized the efforts of the United Nations to help the Iraqi people rebuild their country.

87. He reiterated the European Union's support for the short- and long-term measures recommended in the Secretary-General's report in 2000 (A/55/637) to improve the protective regime of the Convention. Many delegations had shown an interest in the matter within the Ad Hoc Committee, where it had been agreed that every effort should be made to strengthen the safety and security of United Nations and associated personnel. As the Secretary-General said in his report (A/58/187), however, the strength of the Convention's protective regime lay in the widest possible accession and in readiness to implement its provisions. In order to punish those responsible for acts of violence against United Nations and associated personnel, universal participation should be strongly encouraged. Indeed, such attacks were a war crime, according to the Rome Statute of the International Criminal Court.

88. The European Union had underlined several times at the meeting of the Working Group that it attached great importance to strengthening the safety of personnel engaged in United Nations peacekeeping and humanitarian operations, particularly since the Union and its member States were among the largest contributors to such operations. He reiterated that the European Union considered the requirement of an exceptional-risk declaration to be a major limitation on the Convention and supported its elimination, in the belief that the Convention should apply automatically, without distinction, to any operation conducted under United Nations authority or control. It therefore supported the New Zealand proposal concerning a protocol to the Convention, as amended by the European Union with the aim of clarifying the scope of article 1 of the proposal. The New Zealand proposal

enhanced considerably the protection of United Nations and associated personnel in the field. The European Union also endorsed the recommendation that the Ad Hoc Committee should be reconvened with a mandate to expand the scope of legal protection under the Convention through a legal instrument.

89. **Mr. Katra** (Lebanon) said that, with his country's 25 years' experience of the United Nations Interim Force in Lebanon (UNIFIL), his delegation took a particular interest in all measures of protection for United Nations and associated personnel, both in southern Lebanon and elsewhere. UNIFIL had managed to fulfil its responsibilities in protecting the civilian population in southern Lebanon, in cooperation with the Lebanese Government, which was extremely grateful to the Organization and contributing countries, for their help in bringing peace to the region. The safety of personnel in such forces must be paramount. Lebanon had therefore signed the Convention two weeks earlier. His delegation endorsed the recommendations of the Working Group, which deserved full support for its work.

*The meeting rose at 12.40 p.m.*